

# Thomas-Jensen Affirmation

## Exhibit # 33

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF NEW YORK; STATE OF  
CALIFORNIA; STATE OF ILLINOIS; STATE OF  
RHODE ISLAND; STATE OF NEW JERSEY;  
COMMONWEALTH OF MASSACHUSETTS;  
STATE OF ARIZONA; STATE OF COLORADO;  
STATE OF CONNECTICUT; STATE OF  
DELAWARE; THE DISTRICT OF COLUMBIA;  
STATE OF HAWAII; STATE OF MAINE; STATE  
OF MARYLAND; STATE OF MICHIGAN; STATE  
OF MINNESOTA; STATE OF NEVADA; STATE  
OF NORTH CAROLINA; STATE OF NEW  
MEXICO; STATE OF OREGON; STATE OF  
VERMONT STATE OF WASHINGTON; STATE  
OF WISCONSIN,

Plaintiffs,

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY  
AS PRESIDENT OF THE UNITED STATES; U.S.  
OFFICE OF MANAGEMENT AND BUDGET;  
MATTHEW J. VAETH, IN HIS OFFICIAL  
CAPACITY AS ACTING DIRECTOR OF THE  
U.S. OFFICE OF MANAGEMENT AND  
BUDGET; U.S. DEPARTMENT OF THE  
TREASURY; SCOTT BESSENT, IN HIS  
OFFICIAL CAPACITY AS SECRETARY OF THE  
TREASURY; PATRICIA COLLINS IN HER  
OFFICIAL CAPACITY AS TREASURER OF THE  
U.S.; U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; DOROTHY A. FINK, M.D.,  
IN HER OFFICIAL CAPACITY AS ACTING  
SECRETARY OF HEALTH AND HUMAN  
SERVICES; U.S. DEPARTMENT OF  
EDUCATION; DENISE CARTER, IN HER  
OFFICIAL CAPACITY AS ACTING SECRETARY  
OF EDUCATION; U.S. FEDERAL EMERGENCY  
MANAGEMENT AGENCY; CAMERON  
HAMILTON, IN HIS OFFICIAL CAPACITY AS  
ACTING ADMINISTRATOR OF THE U.S.  
FEDERAL EMERGENCY MANAGEMENT

C.A. No. 25-cv-39-JJM-PAS

AGENCY; U.S. DEPARTMENT OF  
TRANSPORTATION;  
JUDITH KALETA, IN HER OFFICIAL  
CAPACITY AS ACTING SECRETARY OF  
TRANSPORTATION;  
U.S. DEPARTMENT OF LABOR; VINCE  
MICONE, IN HIS OFFICIAL CAPACITY AS  
ACTING SECRETARY OF LABOR; U.S.  
DEPARTMENT OF ENERGY; INGRID KOLB, IN  
HER OFFICIAL CAPACITY AS ACTING  
SECRETARY OF THE U.S. DEPARTMENT OF  
ENERGY; U.S. ENVIRONMENTAL  
PROTECTION AGENCY; JAMES PAYNE, IN HIS  
OFFICIAL CAPACITY AS ACTING  
ADMINISTRATOR OF THE U.S.  
ENVIRONMENTAL PROTECTION AGENCY;  
U.S. DEPARTMENT OF HOMELAND  
SECURITY; KRISTI NOEM, IN HER CAPACITY  
AS SECRETARY OF THE U.S. DEPARTMENT  
OF HOMELAND SECURITY; U.S.  
DEPARTMENT OF JUSTICE; JAMES R.  
McHENRY III, IN HIS OFFICIAL CAPACITY AS  
ACTING ATTORNEY GENERAL OF THE U.S.  
DEPARTMENT OF JUSTICE; THE NATIONAL  
SCIENCE FOUNDATION and DR.  
SETHURAMAN PANCHANATHAN, IN HIS  
CAPACITY AS DIRECTOR OF THE NATIONAL  
SCIENCE FOUNDATION,

Defendants.

**DECLARATION OF BRANDY HUNT**

I, Brandy Hunt, declare as follows:

1. I am a resident of the State of California. I am over the age of 18 and have personal knowledge of all the facts stated herein, except to those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth below.

2. I am currently employed by the California Department of Resources Recycling and Recovery ("CalRecycle") as Deputy Director of CalRecycle's Administrative, Fiscal and Information Technology Services Division.

3. CalRecycle is a California state agency responsible for regulating waste management and recycling.

4. As Deputy Director, I serve as the agency's authorized representative for federal grant funding. The agency's authorized representative submits all federal grant requests on behalf of the department and oversees CalRecycle's Accounting Section, which is responsible for tracking federal funds and drawing them down after proof of payment.

5. Between 2021 and the present, CalRecycle applied for and was awarded the following federal grant: Solid Waste Infrastructure for Recycling (SWIFR) grant. I understand that the funds for this grant program were appropriated by Congress as part of the Infrastructure Investment and Jobs Act (P.L. 117-58) ("IIJA").

6. True and accurate copies of the final grant award documents are attached hereto as Exhibit A, reflecting the date this award was executed. A true and accurate copy of the terms and conditions applicable to that grant is included in those award documents.

7. CalRecycle has been awarded grant funding under the SWIFR grant program in the amount of \$370,187.

8. US EPA's Solid Waste Infrastructure for Recycling (SWIFR) grants for states and territories fund activities that support long-term planning and data collection needs to demonstrate progress toward the National Recycling Goal and Food Loss and Waste Reduction Goal and advance a Circular Economy for materials, as well as support the state-led implementation of plans to advance post-consumer materials management.

9. The SWIFR grant funds are used by CalRecycle as part of a broader effort to develop a Zero Waste Plan to formulate special considerations for rural counties across the state. This effort involves examining current waste management practices and local government resources, as well as engaging with communities to better understand the needs specific to their local economies, geography, and demographics.

10. At least 34 cities and counties across California have developed Zero Waste Plans or initiatives in an effort to reduce solid waste disposal in their jurisdictions and stimulate the development of a circular economy. However, these plans commonly highlight the limitations of their effectiveness at the local level and the need for a robust statewide initiative. In accordance with the waste management hierarchy, a crucial component of these plans at both a local and statewide level should be source reduction, which focuses on reducing the overall volume, and therefore environmental impact, of waste.

11. CalRecycle is actively working on establishing a statewide Zero Waste Plan that will offer recommendations for program implementation at the local level as well as establishing goals and recommendations for policy and funding at the state level. The objective of a statewide plan is to provide holistic and standardized guidelines across the state, CalRecycle recognizes that rural counties face unique challenges, and statewide recommendations may be infeasible in these regions. The statewide Zero Waste Plan and rural regions will benefit greatly from the use of this funding to address the unique challenges that rural jurisdictions face.

12. I have reviewed President Trump's executive order titled "Unleashing American Energy," dated January 20, 2025 ("Energy EO"). I first became aware of the Energy EO on January 31, 2025. It is my understanding that Section 7 of the Energy EO orders all agencies to "immediately pause the disbursement of funds appropriated through the Inflation Reduction Act

of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58).” I understand that the funds and disbursements targeted in the Energy EO include disbursements to CalRecycle under the SWIFR grant described above.

13. I have reviewed the Memorandum for Heads of Executive Departments and Agencies, M-25-13, dated January 27, 2025, issued by the Executive Office of the President of the United States, Office of Management and Budget, Matthew J. Vaeth, Acting Director, regarding “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs” (“OMB Memo”). I first became aware of the OMB Memo on January 27, 2025. It is my understanding that the OMB Memo requires all federal agencies to “pause” all activities related to disbursement of all federal financial assistance, which I understand would include disbursements to CalRecycle under the SWIFR grant, described above.

14. CalRecycle’s budget for this year has relied on funding from the SWIFR grant, and we implemented a program and allocated funding to a contract based on the anticipated receipt of the federal funding promised in this award.

15. CalRecycle has already been unable to access disbursements to which it is entitled under this award. On January 31, 2025, at approximately 9:21 a.m. Pacific Standard Time, my employee logged into the Automated Standard Application for Payments (ASAP), the federal government’s electronic system for transferring money to grant recipients, including CalRecycle. I noticed that our account for the SWIFR grant was no longer accessible in ASAP. Upon further investigation, I confirmed that the funding for this grant has been removed from ASAP, meaning CalRecycle cannot draw down against this grant to pay for any work performed under the grant.

16. I logged into ASAP on January 31, 2025 in order to confirm if CalRecycle would be able to initiate a payment request to US EPA to draw down funds under the SWIFR grant. As

of January 31, 2025, any and all expenses incurred under the grant and for services performed under CalRecycle's contract necessary to carry out the mission and goals of the SWIFR Grant were eligible for reimbursement under the terms of the SWIFR Grant. CalRecycle was and is in compliance with all the terms and conditions relevant for receiving reimbursement.

17. It is my understanding that the balance in the missing grant account corresponds to funds Congress appropriated in the IIJA for the purpose of carrying out the SWIFR grant, which were duly apportioned and obligated to CalRecycle.

18. My employee made several further attempts to access the SWIFR grant on February 3, 2025. At approximately 10:58 a.m., 4:44 p.m., and 5:10 p.m. the SWIFR grant was still not accessible in ASAP.

19. True and accurate copies of screenshots of the ASAP system are attached hereto as Exhibit B, demonstrating CalRecycle's inability to access the SWIFR grant.

20. Any further pause in CalRecycle's federal funding would reduce the effectiveness of the statewide Zero Waste Plan implementation in rural and underserved areas.

21. The contractor has commenced work on the fully executed agreement that is funded by the SWIFR grant. If CalRecycle is unable to pay for the services performed, the department will be at risk of not meeting its agreed upon obligation. In addition, the contractor has taken on a significant up-front expense to perform the work under the contract and their business would be negatively impacted if not paid timely.

22. In the next 8 months, CalRecycle expects to submit approximately \$334,000 for reimbursement under this grant.

23. Since January 20, 2025, the date of the Energy EO, and January 27, 2025, the date of the OMB Memo to pause funding, there has been uncertainty in CalRecycle's ability to draw

down funds and to compensate the contractor for work conducted under CalRecycle's contract, which has significant ramifications for CalRecycle as a public entity and the contractor that is relying on this compensation to conduct the services.

24. If funding is not guaranteed, CalRecycle will likely have to issue a stop-work order on the contract and may need to terminate the contract. Work on the contract has already begun and invoices are expected soon. Without funding, CalRecycle will be unable to meet its payment obligations for services rendered. Failure to pay these invoices exposes the department to the risk of a dispute with the contractor, who has an expectation of payment under the agreement. Additionally, if CalRecycle terminates the contract, taxpayer dollars spent on work already performed will have been wasted on an incomplete project with no final deliverable.

25. CalRecycle will be forced to rely on alternative funding sources, either to avoid terminating the contract or to pay for the work already performed prior to contract termination. The most suitable fund for this purpose is the Integrated Waste Management Account (IWMA), which would allow operations to continue and invoices to be paid. However, the IWMA is already running a deficit due to declining revenue and is projected to have a negative balance next budget year. This fund was originally established to support critical landfill-related activities, such as enforcement, cleanup, and addressing illegal dumping—issues that have direct public health impacts. Redirecting funding to cover these expenses would delay other critical activities, such as addressing active illegal dumping, remediating environmental hazards at landfills, and solid waste cleanup.

26. Additionally, if CalRecycle must terminate the contract due to lack of funding, it would create significant gaps in the mandated statewide Zero Waste Plan for California, particularly in rural and disadvantaged communities. Delays in this plan would also hinder

CalRecycle's ability to meet the goals of Senate Bill 1383, which aims to reduce greenhouse gas emissions, minimize landfill waste, and support community well-being.

27. We continue to be concerned that the funding will again be delayed or denied due to uncertainty in our ability to draw down funds when necessary and lack of communication from the grant manager at US EPA.


28. I sent an email on February 3, 2025, at 6:16 p.m. Pacific Standard Time to the relevant EPA officials inquiring about CalRecycle's SWIFR grant missing from ASAP. A true and correct copy of this February 3, 2025, email sent to EPA is attached hereto as Exhibit C. At the time of signing this declaration, EPA has not responded.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 05, 2025, at Sacramento, California.

  
\_\_\_\_\_  
Brandy Hunt

**EXHIBIT A**

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 98T77201 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> SC		<b>DATE OF AWARD</b> 08/30/2023
		<b>TYPE OF ACTION</b> New		<b>MAILING DATE</b> 09/05/2023
		<b>PAYMENT METHOD:</b> ASAP		<b>ACH#</b> 8325
		<b>RECIPIENT TYPE:</b> State		
<b>RECIPIENT:</b> Dept of Resources Recycling & Recovery 1001 I Street Sacramento, CA 95814-2828 <b>EIN:</b> 27-2088519		<b>PAYEE:</b> Dept of Resources Recycling and Recovery 1001 I Street Sacramento, CA 95814-2828		
<b>PROJECT MANAGER</b> Dan Brown 1001 I Street Sacramento, CA 95814-2828 <b>Email:</b> dan.brown@calrecycle.ca.gov <b>Phone:</b> 916-322-0957		<b>EPA PROJECT OFFICER</b> Megan Luo 75 Hawthorne Street, LND-2-3 San Francisco, CA 94105 <b>Email:</b> Luo.Megan@epa.gov <b>Phone:</b> 415-972-3058		<b>EPA GRANT SPECIALIST</b> Lamont Nowlin Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105 <b>Email:</b> Nowlin.Lamont@epa.gov <b>Phone:</b> 213-244-1874
<b>PROJECT TITLE AND DESCRIPTION</b> Solid Waste Infrastructure Financing - Save Our Seas See Attachment 1 for project description.				
<b>BUDGET PERIOD</b> 10/01/2023 - 09/30/2026	<b>PROJECT PERIOD</b> 10/01/2023 - 09/30/2026	<b>TOTAL BUDGET PERIOD COST</b> \$370,187.00	<b>TOTAL PROJECT PERIOD COST</b> \$370,187.00	
<b>NOTICE OF AWARD</b> <p>Based on your Application dated 05/31/2023 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$370,187.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$370,187.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>				
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9, U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9, Land, Chemicals, and Redevelopment Division, LND-1 R9 - Region 9 75 Hawthorne Street San Francisco, CA 94105		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>				
<b>Digital signature applied by EPA Award Official</b> Carolyn Truong - Grants Management Officer				<b>DATE</b> 08/30/2023

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$370,187	\$370,187
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$370,187	\$370,187

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.920 - Solid Waste Infrastructure Financing - Save Our Seas Act Grants	33 USC 4282(a) & FY22 Consolidated Appropriations Act (PL 117-103)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

[illegible]

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$370,187
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$370,187
10. Indirect Costs: 0.00 % Base See Terms and Conditions	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$370,187
12. Total Approved Assistance Amount	\$370,187
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$370,187
15. Total EPA Amount Awarded To Date	\$370,187

### **Attachment 1 - Project Description**

EPA's Solid Waste Infrastructure for Recycling (SWIFR) grants for states and territories will fund activities that support long-term planning and data collection needs to demonstrate progress toward the National Recycling Goal and Food Loss and Waste Reduction Goal and advance a Circular Economy for materials, as well as support the state-led implementation of plans to advance post-consumer materials management. The purpose of this award is to enhance California's efforts to meet the SWIFR grants elements. As part of a broader effort to develop a Zero Waste Plan (ZWP), California's Department of Resources Recycling and Recovery (CalRecycle) will expand the scope of this endeavor to formulate special considerations for rural counties across the state. This effort will involve examining current waste management practices and local government resources, as well as engaging with communities to better understand the needs specific to their local economies, geography, and demographics. This assistance agreement provides full federal funding in the amount of \$370,187. The activities include broad data collection and community engagement (public workshops, solicited comment periods, focus groups), followed by analysis of solid waste material flow through these communities as well as market growth potential that will further aid in tailoring ZWP elements to these communities. Specific activities will focus on six main topics: 1) current material flows and waste processing infrastructure challenges; 2) existing public resources, programs, and ordinances; 3) specific challenges and needs of local residents throughout rural counties; 4) analysis of local economies and waste generation; 5) feasibility of implementing common zero waste strategies in rural counties, and 6) methodologies for measuring progress and success. The anticipated deliverables include a publicly available report, along with community engagement opportunities (public workshops and commenting periods), focused on rural counties that will be incorporated into a statewide Zero Waste Plan for California.

The expected outcomes include focused ZW resources to areas of greatest burden, determination of how current programs can be enhanced to successfully implement ZW strategies, assessment of how resident priorities can best be addressed in the ZWP, assessment of industry-specific challenges in waste management practices as they vary in rural counties, and resources for ZW program implementation at state and local levels.

The intended beneficiaries include California residents and municipalities, with a focus on rural communities that will be stimulated by job creation in the circular economy for this immediate project. No subawards are included in this assistance agreement.

## **Administrative Conditions**

### **General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

### **A. Federal Financial Reporting (FFR)**

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the EPA Finance Center in Research Triangle Park, NC. The annual FFR will be submitted electronically to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) no later than **December 30** of the same calendar year. Find additional information at <https://www.epa.gov/financial/grants>. (NOTE: The grantee must submit the Final FFR to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) within 120 days after the end of the project period.)

### **B. Procurement**

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance with 2 CFR Part 200.324, the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

*State recipients must follow procurement procedures as outlined in 2 CFR Part 200.317.*

### **C. MBE/WBE Reporting, 40 CFR, Part 33, Subpart E (EPA Form 5700-52A)**

The recipient agrees to submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) annually for the duration of the project period. The current EPA Form 5700-52A with instructions is located at <https://www.epa.gov/grants/epa-grantee-forms>

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the **Simplified Acquisition Threshold (SAT) currently set at \$250,000** (the dollar threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. All procurement actions are reportable when reporting is required, not just the portion which exceeds the SAT.

Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For

the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. For section 2B, the Region 9 EPA DBA Coordinator is Alexandra Perez, email: [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov), phone: 415-972-3826.

The annual reports are due by October 30th of each calendar year and the final report is due within 120 days after the end of the project period, whichever comes first. The recipient will submit the MBE/WBE report(s) and/or questions to [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov) and the EPA Grants Specialist identified on page 1 of the award document.

#### **D. Indirect Costs**

The Cost Principles under 2 CFR Part 200, Subpart E apply to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

### **Programmatic Conditions**

#### **a. Performance Reporting and Final Performance Report**

##### **Performance Reports – Content**

In accordance with 2 CFR 200.329, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) The reasons why established outputs/outcomes were not met; and 3) Additional pertinent information, including, when appropriate, analysis and explanation of cost overruns or high-unit costs.

Additionally, the recipient agrees to inform EPA as soon as problems, delays, or adverse conditions which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan are known.

##### **Performance Reports - Frequency**

The recipient agrees to submit **annual** performance reports electronically to the EPA Project Officer within 90 days after the annual reporting period ends beginning on **September 30, 2024**. The recipient must submit the final performance report no later than 120 calendar days after the end date of the period of performance.

**Semi-annual** performance reports are required, they are to be submitted electronically to the EPA Project Officer within 30 days after the reporting period (every six-month period). The reporting periods are semi-annually after **March 31, 2024**.

#### **b. Cybersecurity**

##### **State Grant Cybersecurity**

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or

EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

### **c. Competency Policy**

#### **Competency of Organizations Generating Environmental Measurement Data**

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements,

Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at <https://www.epa.gov/sites/production/files/2015-03/documents/competency-policy-aiaa-new.pdf> or a copy may also be requested by contacting the EPA Project Officer for this award.

### **d. Quality Assurance**

Authority: Quality Assurance applies to all assistance agreements involving environmental information as defined in 2 C.F.R. § 1500.12 Quality Assurance.

The recipient shall ensure that subawards involving environmental information issued under this agreement include appropriate quality requirements for the work. The recipient shall ensure sub-award recipients develop and implement a Quality Assurance (QA) planning document in accordance with this term and condition; and/or ensure sub-award recipients implement all applicable approved QA planning documents.

#### **1. Quality Assurance Project Plan (QAPP)**

a. Prior to beginning environmental information operations, the recipient must:

i. Develop a QAPP,

ii. Prepare QAPP in accordance with the current version of EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans,

- iii. Submit the document for EPA review, and
  - iv. Obtain EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval.
- b. The recipient must submit the QAPP **120** days after grant award.
- c. The recipient shall notify the PO and QAM when substantive changes are needed to the QAPP. EPA may require the QAPP be updated and re-submitted for approval.
- d. The recipient must review their approved QAPP at least annually. The results of the QAPP review and any revisions must be submitted to the PO and the QAM at least annually and may also be submitted when changes occur.

**For Reference:**

- EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans; contain quality specifications for EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- EPA QA/G-5: Guidance for Quality Assurance Project Plans, Appendix C provides a QAPP Checklist.
- EPA's Quality Program website has a list of QA managers, and Non-EPA Organizations Quality Specifications.
- The Office of Grants and Debarment Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance.

**e. Use of Logos**

If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the recipient or subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that CalRecycle received financial support from the EPA under an Assistance Agreement. More information is available at: <https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy>

**f. Paperwork Reduction Act**

Notwithstanding any references to collection of information in the recipient's application or proposal for EPA funding, the scope of work for this cooperative agreement does not include a survey or other information collection of identical information from 10 or more parties. No EPA funds (directly paid by EPA or from the recipient's cost share) may be used for the design or administration of such an information collection, and EPA personnel may not participate in such activities. Reasonable costs for analyzing independently collected information and publishing the results of such information collections are allowable to the extent authorized in the EPA approved budget for this agreement.

**g. Substantial Involvement**

EPA will be substantially involved in this agreement. Substantial involvement by the EPA Project Officer may include (but is not limited to):

- 1.) monthly or quarterly telephone calls and other monitoring (or meeting on an alternate schedule suggested by EPA's Project Officer),
- 2.) reviewing project phases and providing approval to continue to the next phase,

3.) reviewing and commenting on any documents, web content, or other materials developed under this agreement (the recipient will make final decisions on these matters),

4.) approving substantive terms included in contracts or subawards (EPA's Project Officer will not suggest, recommend or direct the recipient to select any particular contractor or subrecipient except to the extent permitted in Section 10 of EPA's Subaward Policy).

5.) reviewing and commenting on the programmatic progress reports

6.) Consultation with EPA regarding the selection of key personnel (EPA's involvement is limited to reviewing the technical qualifications of key personnel and the recipient will make the final decisions on selection. EPA's Project Officer will not suggest, recommend or direct the recipient to select any individual).

7.) Joint operational involvement, participation, and/or collaboration between EPA and the recipient. EPA's Project Officer or designee may provide data, advice, and information that will help the grantee carry out the agreement effectively.

EPA will be substantially involved in this agreement. Substantial involvement by the EPA Project Officer may include (but is not limited to):

1.) quarterly telephone calls or online meetings and other monitoring (or meeting on an alternate schedule suggested by EPA's Project Officer),

2.) reviewing project phases and providing approval to continue to the next phase,

3.) reviewing and commenting on any documents, web content, or other materials developed under this agreement (the recipient will make final decisions on these matters),

4.) approving substantive terms included in contracts or subawards (EPA's Project Officer will not suggest, recommend or direct the recipient to select any particular contractor or subrecipient except to the extent permitted in Section 10 of EPA's Subaward Policy),

5.) reviewing and commenting on the programmatic progress reports,

6.) Consultation with EPA regarding the selection of key personnel (EPA's involvement is limited to reviewing the technical qualifications of key personnel and the recipient will make the final decisions on selection. EPA's Project Officer will not suggest, recommend or direct the recipient to select any individual), and

7.) Joint operational involvement, participation, and/or collaboration between EPA and the recipient. EPA's Project Officer or designee may provide data, advice, and information that will help the grantee carry out the agreement effectively.

#### **h. Public or Media Events**

EPA encourages the recipient to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events developed as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

**\*\*\*END OF ASSISTANCE AGREEMENT\*\*\***

## **EPA General Terms and Conditions Effective October 1, 2022**

### **1. Introduction**

- (a) The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.339 and 200.340.
- (b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

### **2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards**

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.2, Adoption of 2 CFR Part 200, states the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR Part 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

**2.1. Effective Date and Incremental or Supplemental Funding.** Consistent with the OMB Frequently Asked Questions at <https://cfo.gov/cofar> on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 2 CFR 200.1) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR Parts 200 and 1500).

### **3. Termination**

Consistent with 2 CFR 200.340, EPA may unilaterally terminate this award in whole or in part:

- a. if a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or
- b. if the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:
  - (i) EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;

(ii) EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award;

(iii) EPA determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.

## Financial Information

### 4. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See 2 CFR 1500.9.

### 5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

**Electronic Payments.** Recipients must be enrolled or enroll in the Automated Standard Application for Payments (ASAP) system to receive payments under EPA financial assistance agreements unless:

- EPA grants a recipient-specific exception;
- The assistance program has received a waiver from this requirement;
- The recipient is exempt from this requirement under 31 CFR 208.4; or,
- The recipient is a fellowship recipient pursuant to 40 CFR Part 46.

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers.

To enroll in ASAP, complete the ASAP Initiate Enrollment Form located at:

<https://www.epa.gov/financial/forms> and email it to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or mail it to:

US Environmental Protection Agency  
RTP-Finance Center (Mail Code AA216-01)  
4930 Page Rd.  
Durham, NC 27711

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Research Triangle Park Finance Center (RTPFC), at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or 919-541-5347, or by visiting: <https://www.fiscal.treasury.gov/asap/>.

EPA will grant exceptions to the ASAP enrollment requirement only in situations in which the recipient demonstrates to EPA that receiving payment via ASAP places an undue administrative or financial management burden on the recipient or EPA determines that granting the waiver is in the public interest. Recipients may request an exception to the requirement by following the procedures specified in RAIN-2018-G06-R.

### **Proper Payment Drawdown (for recipients other than states)**

- a. As required by 2 CFR 200.305(b), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.
- b. Recipients may not retain more than 5% of the amount drawn down, or \$1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.
- c. If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at 2 CFR 200.305(b)(8) and (9) regarding depositing advances of Federal funds in interest bearing accounts.
- d. Returning Funds: Pay.gov is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) to obtain complete instructions. Additional information is available at the Pay.gov website: (<https://www.pay.gov/public/home>). Information on how to repay EPA via check is available at <https://www.epa.gov/financial/makepayment>. Instructions on how to return funds to EPA electronically via ASAP are available at <https://www.fiscal.treasury.gov/asap/>.
- e. Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under 2 CFR 200.208 and/or 2 CFR 200.339.
- f. If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in RAIN-2018-G06-R. EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest.

### **Proper Payment Drawdown for State Recipients**

In accordance with 2 CFR 200.305(a), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205, Subparts A and B and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies" unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides otherwise. Pursuant to 31 CFR Part 205, Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement, States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement, which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with 2 CFR 200.302(a) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

## Selected Items of Cost

### 6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
  - (1) Procure or obtain, extend or renew a contract to procure or obtain;
  - (2) Enter into a contract (or extend or renew a contract) to procure; or
  - (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

### 7. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office of Personnel Management's Fact Sheet: How to Compute Rates of Pay and Fact Sheet: Expert and Consultant Pay. Specifically, to determine the maximum daily rate, follow these steps:

1. Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round \$18.845 to \$18.85).
2. Multiply the hourly rate by 8 hours. The product is the maximum daily rate.

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.10.

## 8. Establishing and Managing Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>.

As a pass-through entity, the recipient agrees to:

1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.331 and EPA's supplemental guidance in Appendix A of the EPA Subaward Policy.
  - (a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.
  - (b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in 2 CFR 200.1 Participant support costs, 2 CFR 200.1 Subaward, and EPA's Guidance on Participant Support Costs.
  - (c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA's Guidance on Participant Support Costs.
2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.
3. Prior to making subawards, ensure that each subrecipient has a "Unique Entity Identifier (UEI)." The UEI is required by 2 CFR Part 25 and 2 CFR 200.332(a)(1). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: <https://www.sam.gov/SAM/> and in EPA's General Term and Condition **"System for Award Management and Universal Identifier Requirements"** of the pass-through entity's agreement with the EPA.
4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.332(a)(2). These requirements include, among others:

- (a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
- (b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled "**Reporting Subawards and Executive Compensation.**"
- (c) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled "**Consultant Fee Cap.**"
- (d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees.**"
- (e) The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at [www.epa.gov/grants](http://www.epa.gov/grants). Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

5. Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.
6. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.332(b) and document the evaluation. Risk factors may include:

Prior experience with same or similar subawards;

- (a) Results of previous audits;
- (b) Whether new or substantially changed personnel or systems, and;
- (c) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

7. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.332(c). Examples of additional requirements authorized by 2 CFR 200.208 include:

- (a) Requiring payments as reimbursements rather than advance payments;
- (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (c) Requiring additional, more detailed financial reports;
- (d) Requiring additional project monitoring;

- (e) Requiring the non-Federal entity to obtain technical or management assistance, and
  - (f) Establishing additional prior approvals.
8. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.332(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
9. Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.1, *Modified Total Direct Costs*, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.
10. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.
11. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR 200.308.
12. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.
13. Establish and follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.
14. Establish and maintain a system under 2 CFR 200.332(d)(3) and 2 CFR 200.521 for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.
15. As provided in 2 CFR 200.333, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

## 9. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## 10. Federal Employee Costs

The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the recipient as authorized by a Federal statute.

## 11. Foreign Travel

**EPA policy requires that all foreign travel must be approved by its Office of International and Tribal Affairs.** The recipient agrees to obtain prior EPA approval before using funds available under this agreement for international travel unless the trip(s) are already described in the EPA approved budget for this agreement. Foreign travel includes trips to Mexico and Canada but does not include trips to Puerto Rico, the U.S. Territories or possessions. Recipients that request post-award approval to travel frequently to Mexico and Canada by motor vehicle (e.g. for sampling or meetings) may describe their proposed travel in general terms in their request for EPA approval. Requests for prior approval must be submitted to the Project Officer for this agreement.

## 12. The Fly America Act and Foreign Travel

The recipient understands that all foreign travel **funded under this assistance agreement** must comply with the Fly America Act. All travel must be on U.S. air carriers certified under 49 U.S.C. Section 40118, to the extent that service by such carriers is available even if foreign air carrier costs are less than the American air carrier.

## 13. Union Organizing (Added 6/14/2023)

Grant funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

# Reporting and Additional Post-Award Requirements

## 14. System for Award Management and Universal Identifier Requirements

**14.1. Requirement for System for Award Management (SAM)** Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain current information in the SAM. This includes information on the recipient's immediate and highest level owner and subsidiaries, as well as on all the recipient's predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

**14.2. Requirement for Unique Entity Identifier.** If the recipient is authorized to make subawards under this award, the recipient:

- a. Must notify potential subrecipients that no entity (see definition in paragraph 14.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.
- b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier.

Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

**14.3. Definitions.** For the purposes of this award term:

- a. **System for Award Management (SAM)** means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site: <https://www.sam.gov/SAM/>.
- b. **Unique Entity Identifier** means the identifier assigned by SAM to uniquely identify business entities.
- c. **Entity** includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following:
  - 14.3.c.1. A foreign organization;
  - 14.3.c.2. A foreign public entity;
  - 14.3.c.3. A domestic for-profit organization; and
  - 14.3.c.4. A domestic or foreign for-profit organization; and
  - 14.3.c.5. A Federal agency.
- d. **Subaward** is defined at 2 CFR 200.1.
- e. **Subrecipient** is defined at 2 CFR 200.1.

**15. Reporting Subawards and Executive Compensation**

**15.1. Reporting of first-tier subawards.**

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 15.4. of this award term, the recipient must report each action that obligates \$30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 15.5 of this award term).
- b. **Where and when to report.** (1) The recipient must report each obligating action described in paragraph 15.1.a of this award term to [www.fsrs.gov](http://www.fsrs.gov). (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)
- c. **What to report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.fsrs.gov>.

**15.2. Reporting Total Compensation of Recipient Executives.**

- a. **Applicability and what to report.** The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:
  - 15.2.a.1. the total Federal funding authorized to date under this award is \$30,000 or more;
  - 15.2.a.2. in the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - 15.2.a.3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/excomp.htm>.)
- b. **Where and when to report.** The recipient must report executive total compensation described in

paragraph 15.2.a of this award term: (i.) As part of the registration Central System for Award Management profile available at <https://www.sam.gov/SAM/> (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

**15.3. Reporting of Total Compensation of Subrecipient Executives.**

- a. **Applicability and what to report.** Unless exempt as provided in paragraph 15.4. of this award term, for each first-tier non-Federal entity subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

**15.3.a.1.** in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

**15.3.a.2.** The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/execomp.htm>.)

- b. **Where and when to report.** The recipient must report subrecipient executive total compensation described in paragraph 15.3.a. of this award term:

**15.3.b.1.** To the recipient.

**15.3.b.2.** By the end of the month following the month during which the recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

**15.4. Exemptions**

- a. If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:

**15.4.a.1.** (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

**15.5. Definitions.** For purposes of this award term:

- a. **Federal agency** means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C 552(f).
- b. **Non-Federal entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; and (iv.) A domestic or foreign for-profit organization.
- c. **Executive** means officers, managing partners, or any other employees in management positions.
- d. **Subaward:**

**15.5.d.1.** This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

**15.5.d.2.** The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

**15.5.d.3.** A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

- e. **Subrecipient** means a non-Federal entity or Federal agency that:

**15.5.e.1.** Receives a subaward from the recipient under this award; and

- 15.5.e.2.** Is accountable to the recipient for the use of the Federal funds provided by the subaward.
- f. Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- 15.5.f.1.** Salary and bonus.
- 15.5.f.2.** Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- 15.5.f.3.** Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- 15.5.f.4.** Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- 15.5.f.5.** Above-market earnings on deferred compensation which is not tax-qualified.
- 15.5.f.6.** Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **16. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance**

### **16.1. General Reporting Requirement**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### **16.2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- a.** Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b.** Reached its final disposition during the most recent five-year period; and
- c.** Is one of the following:
  - 16.2.c.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - 16.2.c.2.** A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - 16.2.c.3.** An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - 16.2.c.4.** Any other criminal, civil, or administrative proceeding if:
    - 16.2.c.4.1.** It could have led to an outcome described in paragraph 16.2.c.1, 16.2.c.2, or 16.2.c.3 of this award term and condition;
    - 16.2.c.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - 16.2.c.4.3.** The requirement in this award term and condition to disclose

information about the proceeding does not conflict with applicable laws and regulations.

### **16.3. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### **16.4. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph 16.1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### **16.5. Definitions**

For purposes of this award term and condition:

- a.** Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b.** Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c.** Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - 16.5.c.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 16.5.c.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## **17. Federal Financial Reporting (FFR)**

Pursuant to 2 CFR 200.328 and 2 CFR 200.344, EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 calendar days after the end of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the end date of the period of performance of the award. Extension of reporting due dates may be approved by EPA when requested and justified by the recipient. The FFR form is available on the internet at: <https://www.epa.gov/financial/forms>. All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or mail it to:

US Environmental Protection Agency  
RTP-Finance Center (Mail Code AA216-01)  
4930 Page Rd.  
Durham, NC 27703

The RTPFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any

additional forms for the closeout of the assistance agreement.

## 18. Indirect Cost Rate Agreements

This term and condition provides requirements for recipients using EPA funds for indirect costs and applies to all EPA assistance agreements unless there are statutory or regulatory limits on IDCs. See also EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements (IDC Policy).

In order for the assistance agreement recipient to use EPA funding for indirect costs, the IDC category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of "exempt" agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
  - Provisional;
  - Final;
  - Fixed rate with carry-forward;
  - Predetermined;
  - 10% *de minimis* rate authorized by 2 CFR 200.414(f)
  - EPA-approved use of an expired fixed rate with carry-forward on an exception basis, as detailed in section 6.4.a. of the IDC Policy.
- "Exempt" state or local governmental departments or agencies are agencies that receive up to and including \$35,000,000 in Federal funding per the department or agency's fiscal year, and must have an IDC rate proposal developed in accordance with 2 CFR Part 200, Appendix VII, with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by 2 CFR Part 200, Appendix III(C)(7), the term "life of the assistance agreement", means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs if they have submitted a proposed IDC rate to their cognizant Federal agency or requested an exception from EPA under subsection 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred.

This term and condition does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with 2 CFR 200.332(a)(4)(i) and (ii) when establishing indirect cost rates for subawards.

## 19. Audit Requirements

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: <https://facides.census.gov/>.

For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <https://facweb.census.gov/>

## **20. Closeout Requirements**

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at:

<https://www.epa.gov/grants/frequent-questions-about-closeouts>

## **21. Suspension and Debarment**

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, “Responsibilities of Participants Regarding Transactions Doing Business With Other Persons,” as implemented and supplemented by 2 C.F.R. Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled “Covered Transactions,” and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to the EPA office that is entering into the transaction with the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.

## **22. Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.**

This award is subject to the provisions contained in an appropriations act(s) which prohibits the Federal Government from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. A “corporation” is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. A corporation may be a for-profit or non-profit organization.

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

By accepting this award, the recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

Alternatively, by accepting this award, the recipient represents that it disclosed unpaid Federal tax liability information and/or Federal felony conviction information to the EPA. The recipient may accept this award if the

EPA Suspension and Debarment Official has considered suspension or debarment of the corporation based on tax liabilities and/or Federal felony convictions and determined that suspension or debarment is not necessary to protect the Government's interests.

If the recipient fails to comply with this term and condition, EPA will annul this agreement and may recover any funds the recipient has expended in violation of the appropriations act(s) prohibition(s). The EPA may also pursue other administrative remedies as outlined in 2 CFR 200.339 and 2 CFR 200.340, and may also pursue suspension and debarment.

## **23. Disclosing Conflict of Interests**

### **23.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost

disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

### **23.2. For awards to states including state universities that are state agencies or instrumentalities**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at: <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.1. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

## **24. Transfer of Funds (Updated 6/14/2023)**

### **24.1. Transfer of Funds**

**Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.**

(1) As provided at 2 CFR 200.308(f), the recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.

(2) Recipients must notify EPA's Grant Specialist and Project Officer of cumulative funding transfers among direct budget categories or programs, functions and activities that do not exceed 10% of the total budget for the agreement. Prior approval by EPA's Grant Management Officer is required if the transfer involves any of the items listed in 2 CFR 200.407 that EPA did not previously approve at time of award or in response to a previous post-award request by the recipient.

### **24.2. Post-Award Changes for Continuing Environmental Program Grants**

**Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.**

To determine if a post-award change in work plan commitments is significant and requires prior written approval for the purposes of 40 CFR §35.114(a) or 40 CFR §35.514(a), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at 40 CFR §35.102. If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official or Grants Management Officer.

The recipient must obtain written approval from the EPA Award Official prior to transferring funds from one budget category to another if the EPA Award Official determines that such transfer significantly changes work plan commitment(s). All transfers must be reported in required performance reports. In addition, unless approved with the budget at the time of award, Continuing Environmental Program (CEP) recipients must also obtain prior written approval from the EPA Award Official or Grants Management Officer to use EPA funds for directly charging compensation for administrative and clerical personnel under 2 CFR 200.413(c) and the General Provisions for Selected Items of Cost allowability at 2 CFR 200.420 through 200.476 as supplemented by EPA's Guidance on Selected Items of Cost. The recipient is not required to obtain prior written approval from the EPA Award Official for other items requiring prior EPA approval listed in 2 CFR §§ 200.407.

## **25. Electronic/Digital Signatures on Financial Assistance Agreement Form(s)/Document(s)**

Throughout the life of this assistance agreement, the recipient agrees to ensure that any form(s)/document(s) required to be signed by the recipient and submitted to EPA through any means including but not limited to hard copy via U.S. mail or express mail, hand delivery or through electronic means such as e-mail are: (1) signed by the individual identified on the form/document, and (2) the signer has the authority to sign the form/document for the recipient. Submission of any signed form(s)/document(s) is subject to any provisions of law on making false statements (e.g., 18 U.S.C. 1001).

## **26. Extension of Project/Budget Period Expiration Date**

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308(e)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing

the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

## **27. Utilization of Disadvantaged Business Enterprises**

### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

The following text either provides updates to 40 CFR, Part 33 based upon the associated class exception or highlights a requirement.

#### **1. EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B**

EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.3(b).

#### **2. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR Section 33.301, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: 40 CFR Section 33.301 (a)-(f).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts (40 CFR Section 33.304). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

#### **3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302 (a)-(d) and (i).

#### **4. BIDDERS LIST, 40 CFR Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

#### **5. FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

In October 2019, a class exception to the entire Subpart D of 40 CFR, Part 33 has been authorized pursuant to the authority in 2 CFR Section 1500.3(b). Notwithstanding Subpart D of 40 CFR, Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

#### **6. MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal

Grants and Cooperative Agreements” report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at [https://www.epa.gov/system/files/documents/2021-08/epa\\_form\\_5700\\_52a.pdf](https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf).

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) (currently, \$250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

**Annual reports are due by October 30th of each year. Final reports are due 120 days after the end of the project period.**

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

#### **7. MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E**

The recipient agrees to comply with all recordkeeping requirements as stipulated in 40 CFR, Part 33, Subpart E including creating and maintaining a bidders list, when required. Any document created as a record to demonstrate compliance with any requirement of 40 CFR, Part 33 must be maintained pursuant to the requirements stated in this Subpart.

## **Programmatic General Terms and Conditions**

### **28. Sufficient Progress**

EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

### **29. Copyrighted Material and Data**

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for [i.e., authorized by] the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as “co-regulators” or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA’s authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the

- copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

### **30. Patents and Inventions**

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at <https://www.nist.gov/iedison>. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at <https://www.nist.gov/iedison>. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property “developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.”

### **31. Acknowledgement Requirements for Non-ORD Assistance Agreements**

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <https://www.nsf.gov/awards/managing/rtc.jsp>. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

### **32. Electronic and Information Technology Accessibility**

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology (“EIT”). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient’s websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the

Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <https://www.access-board.gov/about/policy/accessibility.html>).

### 33. Human Subjects

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this agreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the Project Officer, even if the event is not reportable to the IRB of record.

### 34. Animal Subjects

The recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131-2156. Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training." (Federal Register 50(97): 20864-20865. May 20, 1985). The nine principles can be viewed at <https://olaw.nih.gov/policies-laws/phs-policy.htm>. For additional information about the Principles, the recipient should consult the *Guide for the Care and Use of Laboratory Animals*, prepared by the Institute of Laboratory Animal Resources, National Research Council.

### **35. Light Refreshments and/or Meals**

#### **APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):**

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event; and,
- (3) An estimated number of participants in the event and a description of their roles.

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

#### **FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:**

If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

### **36. Tangible Personal Property**

- 36.1.** Reporting Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other

Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

### **36.2. Disposition**

**36.2.1 Most Recipients.** Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

**36.2.2 State Agencies.** Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

**36.2.3 Superfund Recipients.** Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

### **37. Dual Use Research of Concern (DURC)**

The recipient agrees to conduct all life science research\* in compliance with EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern (EPA DURC Order) and United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC Policy). If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at [DURC@od.nih.gov](mailto:DURC@od.nih.gov).

\*"Life Sciences Research," for purposes of the EPA DURC Order, and based on the definition of research in 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

### **38. Research Misconduct**

In accordance with 2 CFR 200.329, the recipient agrees to notify the EPA Project Officer in writing about research misconduct involving research activities that are supported in whole or in part with EPA funds under this project. EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results [65 FR 76262. I], or ordering, advising or suggesting that subordinates engage in research misconduct. The recipient agrees to:

(1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:

- A. Public health or safety is at risk.
- B. Agency resources or interests are threatened.
- C. Circumstances where research activities should be suspended.
- D. There is a reasonable indication of possible violations of civil or criminal law.
- E. Federal action is required to protect the interests of those involved in the investigation.
- F. The research entity believes that the inquiry or investigation may be made public prematurely so that

appropriate steps can be taken to safeguard evidence and protect the rights of those involved.

G. Circumstances where the research community or public should be informed. [65 FR 76263.III]

(2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

### **39. Scientific Integrity Terms and Conditions**

The recipient agrees to comply with [EPA's Scientific Integrity Policy](#) when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. The recipient agrees to:

#### **39.1 Scientific Products**

- 39.1.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#) [quality policy](#) and peer review policy.
- 39.1.2** Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.
- 39.1.3** Adhere to [EPA's Peer Review Handbook, 4<sup>th</sup> Edition](#), for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

#### **39.2 Scientific Findings**

- 39.2.1** Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.
- 39.2.2** Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.
- 39.2.3** Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.
- 39.2.4** Document the use of independent validation of scientific methods.
- 39.2.5** Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.
- 39.2.6** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

#### **39.3 Scientific Misconduct**

- 39.3.1** Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.
- 39.3.2** Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and

applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.

**39.3.3** Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA retains the ultimate oversight authority for EPA-supported research, grant recipients conducting research bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

**39.3.4** Take the actions required on the part of the recipient described in EPA's Policy and Procedures for Addressing Research Misconduct, Sections 6 through 9, when research misconduct is suspected or found.

#### **39.4 Additional Resources**

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: <https://youtu.be/FQJCy8BXXq8>. A training video is available at: <https://youtu.be/Zc0T7fooot8>.

#### **40. Post-Award Disclosure of Current and Pending Support on Research Grants (Added 8/8/2023)**

The recipient is required to notify EPA if there has been a change in support for the principal investigator and/or major co-investigators listed on EPA Key Contacts Form, EPA Form 5700-54, since submission of its application or the last reporting period in the performance report. If there has been a change, the recipient must report the change within 30 calendar days to the EPA Project Officer. The information should also be included in the next due performance report. EPA may consult with the Principal Investigator and the Authorized Representative, to determine the impact of the new information on the EPA-funded research grant and, where necessary, take appropriate action.

If the recipient discovers that an investigator on an active EPA research grant failed to disclose current and pending support information or provided inaccurate information as part of the proposal submission process, it must provide the revised current and pending support information to the EPA Project Officer within 30 calendar days of the identification of the undisclosed or inaccurate current and pending support information.

### **Public Policy Requirements**

#### **41. Civil Rights Obligations**

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Certifications and Representations in Sam.gov or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations.

##### **a. Statutory Requirements**

- i. In carrying out this agreement, the recipient must comply with:
  1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
  2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against

- persons with disabilities by entities receiving Federal financial assistance; and
- 3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
  - 1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
  - 1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

**b. Regulatory Requirements**

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
  - 1. For Title IX obligations, 40 C.F.R. Part 5; and
  - 2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
  - 3. For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, 2 CFR 200.300.
  - 4. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

**c. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation**

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>
- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

**42. Drug-Free Workplace**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the

award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at [www.ecfr.gov/](http://www.ecfr.gov/).

#### **43. Hotel-Motel Fire Safety**

Pursuant to 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.

#### **44. Lobbying Restrictions**

**a) This assistance agreement is subject to lobbying restrictions as described below. Applicable to all assistance agreements:**

- i) The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR Part 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii) The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000 and require that subrecipients submit certification and disclosure forms accordingly.
- iii) In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv) Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v) By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

**b) Applicable to assistance agreements when the amount of the award is over \$100,000:**

- i) By accepting this award, the recipient certifies, to the best of its knowledge and belief, that:

- (1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked Standard Form -- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - (3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- ii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

#### **45. Recycled Paper**

When directed to provide paper documents, the recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

#### **46. Resource Conservation and Recovery Act**

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.323, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

#### **47. Trafficking in Persons**

##### **a. Provisions applicable to a recipient that is a private entity.**

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
  1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

2. Procure a commercial sex act during the period of time that the award is in effect; or
    3. Use forced labor in the performance of the award or subawards under the award.
  - ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—
    1. Is determined to have violated a prohibition in paragraph a of this award term; or
    2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
      - a. Associated with performance under this award; or
      - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR Part 1532.
- b. **Provision applicable to a recipient other than a private entity.** EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - i. Is determined to have violated an applicable prohibition in paragraph a. of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a of this award term through conduct that is either—
    1. Associated with performance under this award; or
    2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by EPA at 2 CFR Part 1532.
- c. **Provisions applicable to any recipient.**
  - i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.
  - ii. Our right to terminate unilaterally that is described in paragraph a and b:
    1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    2. Is in addition to all other remedies for noncompliance that are available to us under this award.
  - iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.
- d. **Definitions.** For purposes of this award term:
  - i. “Employee” means either:
    1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - iii. “Private entity”:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
2. Includes:
  - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
  - b. A for-profit organization.
- iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**48. Build America, Buy America (Effective May 14, 2022 and applicable to all funding that date forward; Updated 6/14/2023)**

- a. The recipient is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917) for the types of infrastructure projects under the EPA program and activities specified in EPA’s Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act. None of the funds provided under this award may be used for a project of infrastructure unless all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to an infrastructure project are produced in the United States. The Buy America preference requirement applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds. The recipient must implement these requirements in its procurements, and these requirements must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the recipient must consult EPA’s Build America, Buy America website and the Office of Management and Budget’s (OMB) Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.
- b. When supported by rationale provided in IIJA §70914, the recipient may submit a waiver request to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the EPA Build America, Buy America website.
- c. For questions regarding the applicability of the Build America, Buy America Act requirements to this assistance agreement or if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

**49. Required Certifications and Consequences of Fraud (Added 8/8/2023)**

Per 2 CFR 200.415(a) Required Certifications, to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the financial reports or vouchers requesting payment under the agreement will include a certification that must be signed by an official who is authorized to legally bind the recipient which reads as follows:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

**50. Reporting Waste, Fraud, and Abuse (Added 8/8/2023)**

Consistent with 2 CFR 200.113, the recipient and any subrecipients must report, in a timely manner, any violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award to the EPA Project Officer and the EPA Office of Inspector General (OIG) Hotline. The methods to contact the OIG hotline are (1) online submission via the EPA OIG Hotline Complaint Form; (2) email to OIG\_Hotline@epa.gov; (3) phone 1-888-546-8740; or (4) mail directed to Environmental Protection Agency, Office of Inspector General, 1200 Pennsylvania Avenue, N.W. (2410T), Washington, DC 20460.

To support awareness of the OIG hotline, recipients and/or subrecipients receiving an EPA award or subaward of \$1,000,000 or more must display EPA OIG Hotline posters in facilities where the work is performed under the grant. EPA OIG Hotline posters may be downloaded or printed or may be obtained by contacting the OIG at 1-888-546-8740. Recipients and subrecipients need not comply with this requirement if they have established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct and have provided instructions that encourage employees to make such reports.

**51. Whistleblower Protections (Added 8/8/2023)**

This award is subject to whistleblower protections, including the protections established at 41 U.S.C. 4712 providing that an employee of the recipient or a subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a covered person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal grant or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal grant or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal grant or subaward. These covered persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Consistent with 41 U.S.C. 4712(d), the recipient and subrecipients shall inform their employees in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. 4712. Additional information about whistleblower protections, including protections for such employees may be found at the EPA Office of Inspector General's Whistleblower Protection page.

**52. Access to Records (Added 8/8/2023)**

In accordance with 2 CFR 200.337, EPA and the EPA Office of Inspector General (OIG) have the right to access any documents, papers, or other records, including electronic records, of the recipient and subrecipient which are pertinent to this award in order to make audits, examinations, excerpts, and transcripts. This right of access also includes timely and reasonable access to the recipient and subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as the records are retained.

**EXHIBIT B**

Re: IRA/IJA Drill Documents Drill



Sharma, Yogeeta@CalRecycle

To: ● Hunt, Brandy@CalRecycle; ● Nguyen, Bao@CalRecycle

Retention Policy 90 Day - Inbox (90 days)

Expires 5/1/2025

Fri 1/31/2025 9:21 AM



You replied to this message on 1/31/2025 9:35 AM.

I believe its the same for us, we couldn't pull anything except our profile info. Below is a screenshot of the tabs and the payment request is not active, nothing happens when you click on it.



---

**From:** Hunt, Brandy@CalRecycle <Brandy.Hunt@CalRecycle.ca.gov>

Fw: ASAP - Federal Funds

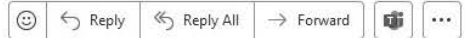


Sharma, Yogeeta@CalRecycle

To: ● Hunt, Brandy@CalRecycle

Retention Policy: 90 Day - Inbox (90 days)

📎 You forwarded this message on 2/3/2025 10:59 AM.



Expires: 5/4/2025

Mon 2/3/2025 10:58 AM

Hi Brandy,

Below is a screenshot of the ASAP portal for Federal funds.

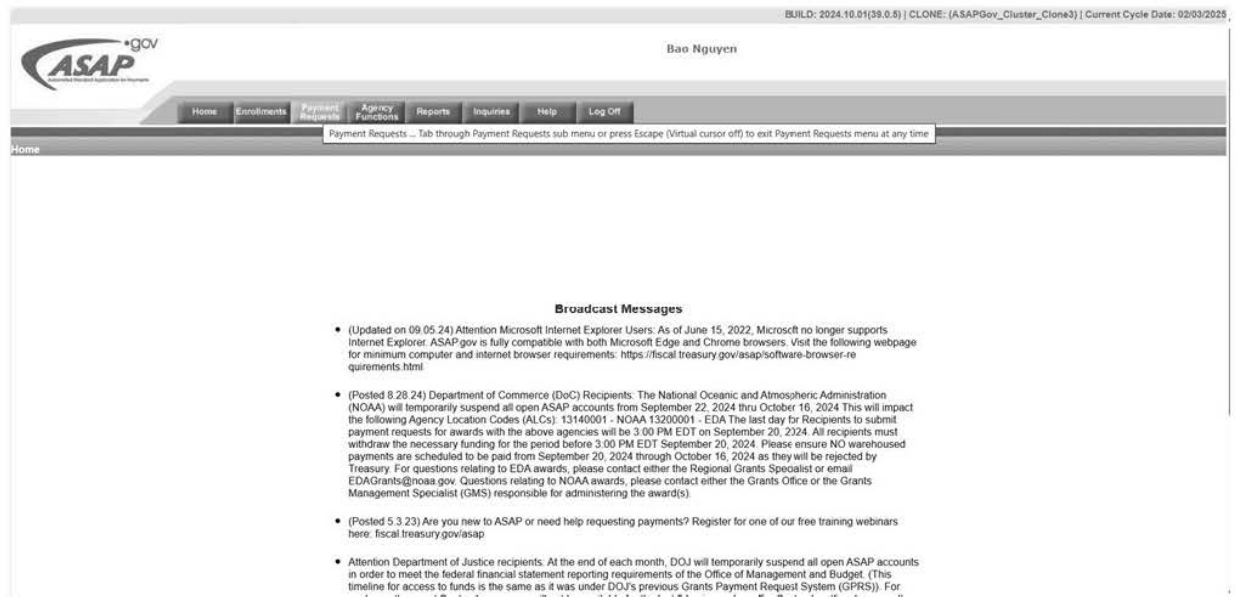
Yogeeta

From: Nguyen, Bao@CalRecycle <Bao.Nguyen@calrecycle.ca.gov>

Sent: Monday, February 3, 2025 10:55 AM

To: Sharma, Yogeeta@CalRecycle <Yogeeta.Sharma@CalRecycle.ca.gov>

Subject: ASAP



Access to Grant 98T77201

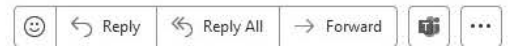


Sharma, Yogeeta@CalRecycle

To: [nowlin.lamont@epa.gov](mailto:nowlin.lamont@epa.gov); [luo.megan@epa.gov](mailto:luo.megan@epa.gov)  
Cc: [Brown, Dan@CalRecycle](mailto:Brown, Dan@CalRecycle); [Hunt, Brandy@CalRecycle](mailto:Hunt, Brandy@CalRecycle)

Retention Policy 90 Day - Inbox (90 days)

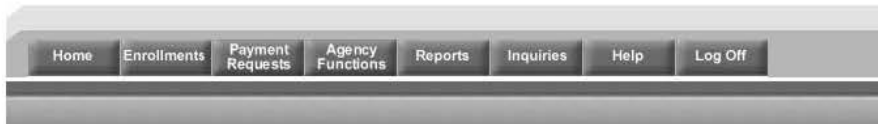
Expires 5/4/2025



Mon 2/3/2025 5:10 PM

Hello,

CalRecycle was awarded \$370,187.00 from the Solid Waste Infrastructure Financing grant. As of last week, we are unable to make any payment requests via ASAP. It seems like the payment request tab is not available. Can you please assist with this? Below is a snip from ASAP.



Thank you,

**Yogeeta Sharma**

Fiscal Services Branch Chief

Administration, Finance, Information Technology

Work: (916) 341-6097

Cell: (916) 698-1837

[Yogeeta.Sharma@CalRecycle.ca.gov](mailto:Yogeeta.Sharma@CalRecycle.ca.gov)



### Broadcast Messages

- (Updated on 09/05/24) Attention Microsoft Internet Explorer Users: As of June 15, 2022, Microsoft no longer supports updates. Internet Explorer ASAP.gov is fully compatible with both Microsoft Edge and Chrome browsers. Visit the following webpage for minimum computer and internet browser requirements: <https://fiscal.treasury.gov/asap/software-browser-requirements.html>
- (Posted 8/28/24) Department of Commerce (DoC) Recipients: The National Oceanic and Atmospheric Administration (NOAA) will temporarily suspend all open ASAP accounts from September 22, 2024 through October 16, 2024. This will impact the following Agency Location Codes (ALCs): 131400001 - NOAA 132000001 - EDA The last day for Recipients to submit payment requests for awards with the above agencies will be 3:00 PM EDT on September 20, 2024. All recipients must complete necessary funding for the period before 3:00 PM EDT September 20, 2024. Please ensure NO unapplied payments are scheduled to be paid from September 20, 2024 through October 16, 2024 as they will be rejected by Treasury. For questions relating to EDA awards, please contact either the Regional Grants Specialist or email [EDAGrants@noaa.gov](mailto:EDAGrants@noaa.gov). Questions relating to NOAA awards, please contact either the Grants Office or the Grants Management Specialist (GMS) responsible for administering the award(s).
- (Posted 5/3/23) Are you new to ASAP or need help requesting payments? Register for one of our free training webinars here: [fiscal.treasury.gov/asap](https://fiscal.treasury.gov/asap)

EXHIBIT C

**From:** [Hunt, Brandy@CalRecycle](mailto:Hunt.Brandy@CalRecycle)  
**To:** ["nowlin.lamont@epa.gov"](mailto:nowlin.lamont@epa.gov); ["luo.megan@epa.gov"](mailto:luo.megan@epa.gov)  
**Cc:** [Sharma, Yogeeta@CalRecycle](mailto:Sharma.Yogeeta@CalRecycle)  
**Subject:** Solid Waste Infrastructure For Recycling Grant - Access in ASAP Portal follow up  
**Date:** Monday, February 3, 2025 6:16:00 PM  
**Attachments:** [USDOJ Notice of Court Order.pdf](#)  
[Rhode Island TRO.pdf](#)  
[DDC TRO.pdf](#)

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Good afternoon.

In follow up to our email requesting access to our grants in the ASAP portal.

Please note that two federal courts have issued temporary restraining orders (attached) prohibiting federal agencies from implementing recent direction to pause, freeze, impede, block, cancel, or terminate disbursement of federal financial assistance or otherwise impede the States' access to such awards and obligations, except on the basis of the applicable authorizing statutes, regulations, and terms. And the U.S. Department of Justice has provided your agency with the attached "Notice of Court Order," which directs, among other things, that "Federal agencies cannot pause, freeze, impede, block, cancel, or terminate any awards or obligations on the basis of the OMB Memo [M-25-13, dated Jan. 27, 2025], or on the basis of the President's recently issued Executive Orders."

As of the afternoon of February 3, 2025, Pacific Time, however, our Solid Waste Infrastructure for Recycling (SWIFR) grant is not showing up in our account. We request that those funds immediately be posted, consistent with the federal court orders and U.S. DOJ's direction.

**Please advise by 12 p.m. Eastern Time (9 a.m. Pacific Time) tomorrow, February 4,** as to whether you have complied with the court's orders, or any reason why you have not posted these funds.

Thank you,

**Brandy Hunt, Deputy Director**  
**Administration, Finance and Information**  
**Technology**  
**California Department of Resources,**  
**Recycling and Recovery**  
☎ (916) 341-6177  
📞 (916) 203-4034  
✉ [brandy.hunt@calrecycle.ca.gov](mailto:brandy.hunt@calrecycle.ca.gov)



